



Ethics Training



USAR Ambassador Forum

7 December 2015

**COL Paul E Reynolds Jr
Senior Legal Advisor
Office of the Chief of Army**



Purpose



To provide your required annual ethics training

To help you understand the standards that govern your conduct as Ambassadors, to include those outlined in:

Title 5, Code of Federal Regulations, Part 2635; and

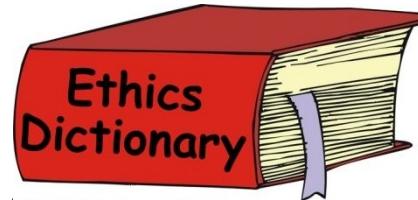
The Joint Ethics Regulation (JER)

To give you an opportunity to ask questions





Special Government Employee



What is a Special Government Employee (SGE)?

The SGE category was created by Congress as a way to apply an important, **but limited** set of conflict of interest requirements to a group of individuals who provide important, **but limited**, service to the Government.

SGEs provide temporary service to the Government (**not to exceed 130 days during any period of 365 consecutive days with or without compensation**). SGEs are often recruited because they provide outside expertise or perspectives that might be unavailable among an agency's regular employees. SGEs are generally used as advisory committee members, individual experts or consultants. However, some SGEs serve on Boards or Commissions and are brought on as per applicable statute. (See 18 U.S.C. 202(a) for more information.)

If an agency designates you as an SGE, but you unexpectedly serve more than 130 days during 365 consecutive days, **you'll still be an SGE** for the remainder of that period. But, during the next 365-day period, the agency should reevaluate whether you should still be



Common Questions



Two fairly common questions that you might be wondering about:

Do the ethics rules apply to you if you receive no pay from the Government?

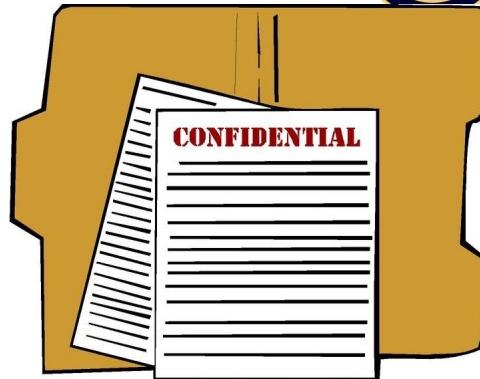
Answer: **Yes they do.** The definition of an SGE includes those who serve "without compensation."

Do the ethics rules apply on days when you perform no Government services? Answer: **Yes they do.** They apply equally on days you serve the Government and on days you don't. Where the Government hasn't used your services for some time, but hasn't specified a termination date in your appointment or otherwise, you might wonder if you remain an SGE. In this case, you'll want to contact your agency's ethics officials for a resolution.





Financial Disclosure



Why?

Public service is a public trust.

In order to protect that public trust, it's necessary to ensure that Government employees uphold the highest ethical standards.

One of the ways this can be accomplished is by **collecting financial disclosure information from Government employees** and reviewing it to identify any potential conflicts of interest.



Requirement for Filing



As a general rule, all SGEs must file either a public or confidential financial disclosure report.

Confidential Reporting: Any SGE not required to file a public financial disclosure report must file a confidential financial disclosure report.

Most SGEs file a confidential financial disclosure report which is not available to the public.



Public Reporting: SGEs file a public financial disclosure report if they perform (or are expected to perform) the duties of their office for **more than 60 days** in a calendar year **AND** are paid at least the equivalent of **120% of the minimum rate of basic pay for GS-15** of the General Schedule.

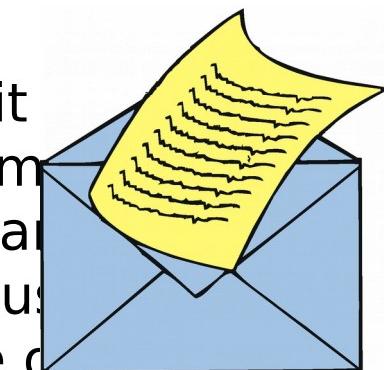


Financial Disclosure



If you file a public report: You will be using the OGE 278 Form (Public Financial Disclosure Report).

If you file a confidential report: You must submit the OGE Form 450 and any OGE-approved supplement unless your Agency has received approval to use an alternative reporting system. However, you may use OGE Optional Form 450-A (Confidential Certificate of Disclosure of Financial Interests). As always, check with your agency's ethics officials to find out which form you must submit.



Send the completed report to the appropriate ethics official within your agency.



Report Contents



What kind of information is reported in a financial disclosure form? The format and information requested differs somewhat, depending on the form that you must complete. But in general, you'll provide information for such areas as:

Assets

Income

Liabilities

Agreements/Arrangements

Outside positions

Some agencies may use **alternative financial disclosure forms** which ask for additional information, such as certain **grants or contracts** you or your employer might have, or whether you have appeared as an **expert witness** in court.





18 U.S.C. 208: Financial Conflicts

Prohibits all employees (including SGEs) from participating in any **particular Government matter** that will have a **direct and predictable effect** on their **financial interests**. It also prohibits employees from acting in Government matters that will affect the financial interests of others with whom they have certain relationships. These relationships are:

Spouse

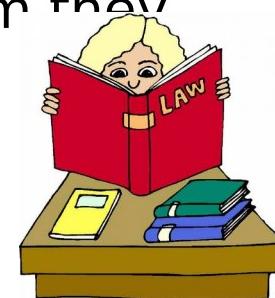
Minor child

General partner

Organization which the individual serves as officer, director, trustee, general partner or employee

Person or organization with which the employee is negotiating or has an arrangement concerning prospective employment.

Because SGEs typically have substantial outside employment and other interests which are often related to the subject areas for which the Government desires their services, issues under section 208 frequently arise.





Financial Conflicts of Interest

“Financial Interest”

Includes any current or contingent ownership, equity, or security interest in real/personal property or a business; may include an indebtedness or compensated employment relationship

Includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity

Does not include:

A future interest created by someone other than the employee, his spouse, or dependent child; or

Any right as a beneficiary of an estate that has not been settled



Do Appearances Matter?



Sometimes, circumstances related to relationships you have outside the Government might lead to questions of whether you have an "**appearance of a lack of impartiality**." In other words, ask yourself whether a reasonable person who is familiar with the facts would question your impartiality.

Example: An SGE working for the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. The SGE would be correct in concluding that a reasonable person would likely question her/his impartiality if she/he were to participate in evaluating that developer's or its competitor's lease proposal.

If you or your agency ethics officials determine that your impartiality is likely to be questioned, your ethics officials must decide whether you may participate in a particular matter. Your agency may determine that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the



Financial Conflicts of Interest



Resolving Financial Conflicts of Interest:

- Disqualification
- Reassignment
- Change of Duties
- Divestiture
- Waiver
- Resignation
- Beware: Appearances Matter!!



Representation



It's not uncommon for an SGE to want to represent an organization to the Government while being employed by the Government. For example, an SGE might want to seek a grant or contract from the Government while being employed as an SGE.

Two conflict of interest statutes impose related **restrictions on outside activities of SGEs**, particularly activities involving the **representation of others before the Government**.





Key Statutes



18 U.S.C. 203 prohibits Federal employees from receiving, agreeing to receive, or soliciting **compensation for representational services**, rendered either personally or by another, before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the **United States is a party or has a direct and substantial interest**.

18 U.S.C. 205 prohibits Federal employees from **personally representing anyone** before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the **United States is a party or has a direct and substantial interest**. Unlike section 203, this prohibition applies whether or not the employee receives any compensation for her or his representational activity. Furthermore, this section also **prohibits** an employee from **representing anyone in the prosecution claim against the United States**, or from receiving any gratuity or interest in a claim, as a consideration for assistance in prosecuting the claim.





Application to SGEs



Both section 203 and section 205 are **limited in their applicability to SGEs**. One of the most significant limitations is that SGEs are **restricted only in connection with particular matters involving**



specific parties. Such matters typically involve a specific proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties. This would include such things as contracts, grants, applications, requests for rulings, litigation or investigations.

Unlike regular employees, **SGEs may represent others or receive compensation for representational service in connection with particular matters of general applicability**, such as broadly applicable policies, rulemaking proceedings, and legislation--**which do not involve specific parties**.

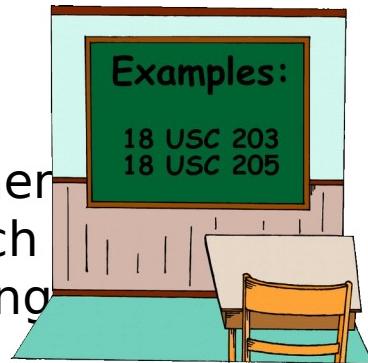
Furthermore, the restrictions on SGEs are narrowly drawn to focus **only** on those particular matters in which the SGE at any time participated substantially and personally, as well as (in some cases) those matters pending in the agency where the SGE is working.



Examples for Sections 203 & 205

Example of when the restrictions don't apply:

A toxicologist is appointed to serve as an SGE on an Environmental Protection Agency (EPA) advisory committee to review research conducted by grantees on water quality. The EPA is also seeking grant applications for air quality research. The SGE has never been involved in air quality issues for the Agency.



The SGE may apply, on behalf of his private employer, for an EPA air quality research grant because it is a different particular matter than any work he has done for the Government (as long as he doesn't serve as an SGE for more than 60 days).

Example of when the restrictions do apply:

An SGE employed by the Department of Housing and Urban Development previously reviewed a specific city's application for Federal assistance for a renewal project. The SGE may not represent this city with regard to matters concerning this application.



Misuse of Position



Public service is a public trust



These words begin the first section of the Standards of Ethical Conduct for Employees of the Executive Branch. The Standards of Ethical Conduct also state that "Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain."

In order to ensure that every citizen can have complete confidence in the integrity of the Government, it's vital that employees (including SGEs) do not misuse their public position for private gain.



Misuse of Position



Scenario:

An SGE seeks lodging at a Military Base. The SGE is not on orders and therefore traveling in his/her personal capacity. The SGE informs the lodging personnel that he/she is an USAR Ambassador and according to protocol carries the rank equivalency of a 2 star flag officer and demands to be placed in VIP quarters. The SGE would not otherwise be entitled to the VIP quarters requested.



Is there a violation?



Bottom Line



As was stated earlier in this section, **public service is a public trust.**



SGEs are typically recruited for **temporary service to the Government** because they provide outside expertise or perspectives that might be unavailable among an agency's regular employees.

Although SGEs are temporary Government employees, they are an essential part of how Government conducts its business. SGEs are Government employees and must **not put their private interests above the interests of the American public.**



The Hatch Act



The Hatch Act restricts certain political activities of Government employees, **including SGEs when engaged in Government business.**

In 1993, Congress passed legislation that substantially amended the Hatch Act, allowing most Federal and D.C. employees to engage in many types of political activity. However, certain restrictions on political activity still remain. For example, you may not use official authority to:

Interfere with an election

Solicit or discourage political activity of anyone with business before their agency

Solicit or receive political contributions (may be done limited situations by Federal labor or other employee

Be a candidate for public office in partisan elections

Engage in political activity while on duty, in a Govern

office, wearing an official uniform, using a Governr vehicle or wear partisan political buttons on duty





Expert Testimony



A Government employee may not (other than on behalf of the United States) serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest unless authorized to do so.

However, this prohibition applies to SGEs **only if they have participated as Government employees in the particular proceeding or in the particular matter that is the subject of the proceeding.** This prohibition is in place during the entire time of their appointment (not just when they are working as SGEs).

A more restrictive standard applies to a smaller class of SGEs who:
Are appointed by the President or
Serve on a commission established by statute or
Have served or are expected to serve more than 60 days in a period of 365 consecutive days



Gifts



SGEs, like all employees, are subject to 5 C.F.R. 2635.202(a), which

prohibits the acceptance of gifts from a “prohibited source” and

gifts given because of an employee’s official position.

The definition of “prohibited source” includes any person seeking official action from the employee’s agency, doing or seeking to do business with the employee’s agency, conducting activities regulated by the employee’s agency, or having interests that may be substantially affected by the employee’s official duties; the definition also includes organizations the majority of whose members fall within any of these categories. 5 C.F.R. 2635.203(d)

SGEs pose unique issues, because many SGEs are employed by, or have substantial professional and business relationships with, such prohibited sources. However, SGEs (and other Government employees) may accept various benefits resulting from outside business or employment activities, where it is clear that such benefits are **not offered or enhanced because of the employee’s official position**. For example, you may attend a holiday party held by your employer or employer transportation provided. This exception



Gifts From Outside Sources



General Rules:

You may not solicit or accept a gift,
directly or indirectly:

From a prohibited source; or

Given because of your official position

A gift to a parent, sibling, spouse, child,
dependent relative, or other person or
organization on your behalf equates to a
gift to you

Nothing requires you to accept a gift - you
may **ALWAYS** decline!!





Gifts From Outside Sources



Is it a gift?

A gift is any item having monetary value.

The term “gift” does not include:

Modest refreshments;

Items of little intrinsic value (e.g., greeting cards);

Normal bank loans;

Public discounts;

Rewards and prizes from public contests;

Pensions and other benefits from a former employer;

Items paid for by the US Government;

Items accepted by the US Government under a specific statutory authority; or

Items for which the employee paid market value





Gifts From Outside Sources



Is the gift from a prohibited source or given because of your official position?

A prohibited source is any person:

Seeking official action by, doing business or seeking to do business with, or conducting activities regulated by your agency (i.e., DoD); or Whose interests may be substantially affected by your performance or

A gift given because of your official position would not have been given if you were not an Ambassador





Gifts From Outside Sources



Is there an exception that applies?

Gifts of \$20 or less per source, per occasion

(\$50 maximum per year)

Gifts based on personal relationships

Discounts/similar benefits offered to a restricted group

Awards for meritorious public service/achievement

Gifts based on outside business/employment relat

Free attendance at widely-
gatherings

Other





Gifts From Outside Sources



How should you dispose of improper gifts?

Refuse or return them

Give them to Uncle Sam

Pay market value for them

If they are perishable and your supervisor
(or an ethics counselor) approves:

Give them to charity

Share them within the office

Destroy them



Use of Government Property



General Rule: You may only use Government property for official or authorized purposes

Includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest

Includes communications systems (e.g., telephones, FAX machines, computers, E-mail, etc.)

Includes motor vehicles

Includes contractor personnel



Official Use



Mission essential

Formally recognized by statute/ regulation;
or

Necessary for the performance of agency
programs or operations



Motor Vehicle Use



Restricted to official purposes only

Official participation in public ceremonies,
military field demonstrations, and parades

Official after-hours functions

Must be approved as an exception to
policy

Must begin and end at place of duty

Changes of command, promotions,
retirements, unit activations/deactivations

Attendance is encouraged

Key = responsible use and good
stewardship



Motor Vehicle Use



Spouses may be transported only when:

Accompanying the Government employee;

Use has already been authorized;

Space is available; and

There is no additional cost



Outside Activities



General Rule: You may not engage in outside employment or activities that conflict with your official duties.

An activity conflicts with your official duties if:

- It is prohibited by statute or regulation;
- It would require you to disqualify yourself from matters so central or critical to the performance of your official duties that it would materially impair your ability to perform your duties as an Ambassador



Teaching, Speaking, or Writing

You might be prohibited from receiving outside compensation for teaching, speaking, or writing when the activity relates to your official duties. The teaching, speaking, or writing is related to your official duties if:

The activity is undertaken as part of your official duties

The circumstances indicate that the invitation was extended to you primarily because of your official position rather than your expertise on a particular subject matter

the invitation to engage in the activity or the offer of compensation was extended to you (directly or indirectly) by a person who has interests that may be affected substantially by performance or nonperformance of your duties

The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information

During a 1-year period of your current appointment

Served more than 60 days and deals in significant part with any matter to which you are presently assigned or were assigned during the previous 1-year period, or

Served 60 days or less and deals in significant part with matters involving specific parties in which you have or are participating personally and substantially.



Outside Activities



The ban on receiving compensation for teaching, speaking or writing about matters to which an employee is presently assigned, or to which an employee was assigned during the previous 1-year period, only applies:

During the current appointment of a SGE;

To particular matters involving specific parties in which a SGE has participated or is participating personally and substantially if the SGE has not served (and is not expected to serve) more than 60 days during the first year or any subsequent year of appointment



Emoluments Clause



As an SGE, you may be subject to the Emoluments Clause of the United States Constitution. The Emoluments Clause prohibits persons who hold offices of profit or trust in the U.S. Government from having any position in or receiving any payment from a foreign government.

Whether you are subject to the Emoluments Clause may depend on the nature of your duties. So, check with your ethics officials before accepting a position or payment from a foreign government.



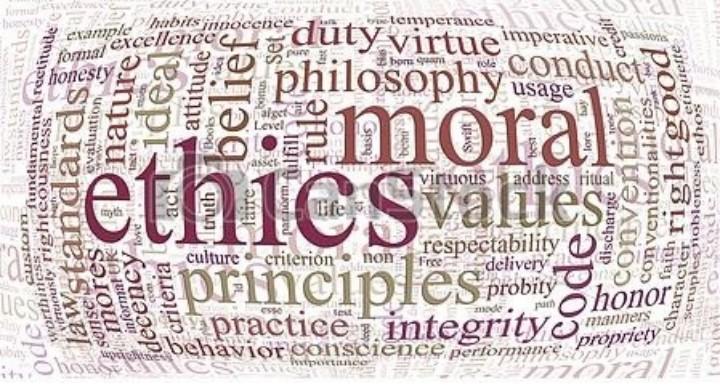
Final Thoughts



Ethics are standards, based on values, governing our actions.

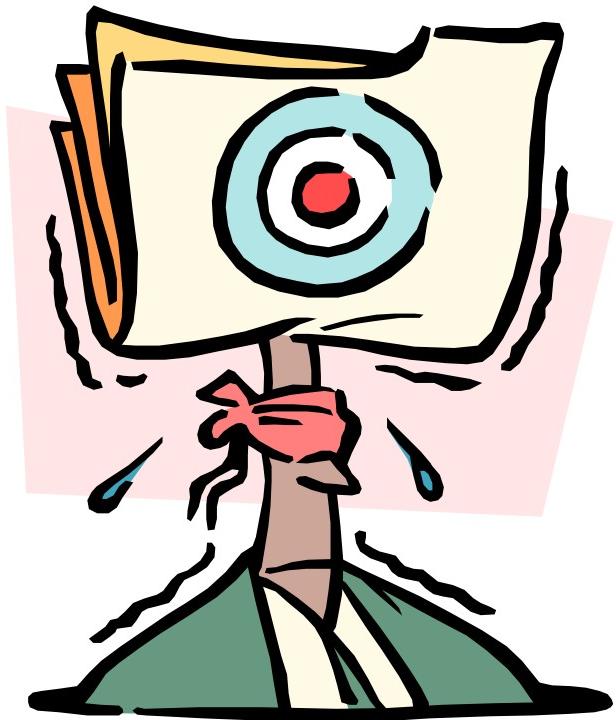
- Values are core beliefs that motivate attitudes and actions
 - Ethical values relate to what is right and wrong
 - Ethical values demand that our actions not only comply with law but promote public confidence.

Even if it is not pro
should always take
yourself how your a





Questions?



Email Contact Information:
paul.e.reynolds18.mil@mail.mil